

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a Reasonable	)	GN Docket No. 07-45
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

**SPRINT NEXTEL CORPORATION COMMENTS**

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**COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint Nextel”) submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Inquiry (“NOI”) into “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

The Commission’s and other independent sources of data confirm that broadband is being deployed in a reasonable and timely fashion. Consumer demand for higher bandwidth services, along with competition by multiple broadband platform providers, is fueling demand for and deployment of broadband services. Not only are wireline and cable providers competing fiercely to provision broadband services, but wireless carriers

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<sup>1</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, *Notice of Inquiry*, FCC 07-21, at ¶ 15 (rel. Apr. 16, 2007) (“2007 706 NOI”), quoting Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (“1996 Act”), also cited as 47 U.S.C. § 157 nt.

also are rolling out mobile broadband at a rapid pace.

Sprint Nextel is at the forefront of the industry in deploying wireless broadband technology. Sprint Nextel's Evolution Data Only ("EvDO") broadband network reaches more than 200 million people nationwide, and, by year-end 2008, will reach as many as 280 million people. Sprint Nextel also is investing in its fourth-generation ("4G") nationwide broadband mobile network, using its 2.5 GHz spectrum holdings and the mobile WiMAX technology standard. By late 2007, Sprint Nextel will soft launch markets in Washington D.C., Baltimore, and Chicago; by 2008, Sprint Nextel expects its WiMAX network to be capable of serving as many as 100 million people.

Although broadband deployment is proceeding in a timely manner, the deployment of competitive broadband is hampered and, indeed, threatened by the monopoly AT&T Corporation ("AT&T") and Verizon Communications ("Verizon") have over the majority of special access lines in their territories. Despite being an industry characterized by increasing efficiency and decreasing costs, AT&T and Verizon are able to demand anticompetitive prices and enjoy supra-competitive rates of return for their services. By unnecessarily maintaining high special access prices, AT&T and Verizon harm consumers by needlessly increasing the costs of providing broadband services and harm competition because AT&T and Verizon are able to protect their own landline broadband services from more intense competition from wireless or other alternatives. As discussed in greater detail below, the Commission therefore can and should act now to enable further competitive broadband deployment by reintroducing the pricing discipline over special access that the market has failed to provide. The Commission should deregulate services only once true competition develops sufficient to

discipline special access services. As Verizon Wireless previously told the Commission with regard to intercarrier compensation reform, “compensation should be provided with reference to the cost of providing service, not serve as an uncapped, unending revenue source for certain carriers by requiring their competitors to subsidize them.”<sup>2</sup> By implementing the pricing discipline that the marketplace has failed to provide, the Commission will ensure that AT&T and Verizon will not succeed in retarding the deployment of competitive broadband services.

In addition, the Commission can take several other important, proactive measures to help accelerate broadband deployment. First, the Commission should swiftly adopt long-delayed service rules for the H Block and license this spectrum through competitive bidding. The H Block presents one of the best opportunities available for the rapid deployment of advanced wireless services and broadband applications. Second, the Commission should allocate the significant majority of the available TV white space frequencies in each geographic licensing area for licensed, fixed use. Such action would permit wireless licensees to obtain much-needed spectrum to support advanced wireless services. Third, the Commission should maintain a stable and predictable regulatory environment that can support the investment of billions of dollars necessary to deliver wireless broadband services to the public. In particular, the Commission should consistently enforce its own rules and deny the recent flood of untimely requests for renewal of long-expired licenses. Fourth, the Commission should support the removal of ITU regulatory barriers to WiMAX deployment and advocate at the 2007 World Radio Conference to open up IMT-2000 spectrum to “other Broadband Wireless Access

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<sup>2</sup> Comments of Verizon Wireless, CC Docket No. 01-92, at 11 (filed Oct. 25, 2006).

systems.” The Commission also should reject efforts to vitiate the Commission’s decision to delete the domestic satellite allocation in the 2.5 GHz band and ensure that other U.S. Government agencies fully understand the negative impact on U.S. mobile terrestrial broadband deployment if satellite interference problems are allowed to arise. Finally, the Commission should take further action to improve tribal consultation processes so as to accelerate the deployment of equipment that can provide broadband wireless services in rural and urban areas.

## **II. BROADBAND IS BEING DEPLOYED IN A REASONABLE AND TIMELY FASHION**

### **A. Data demonstrate that broadband is being deployed in a reasonable and timely fashion.**

Broadband<sup>3</sup> continues to be deployed in a reasonable and timely fashion. As the Commission stated in its NOI, its own “data show a continued, steady increase in residential high-speed lines since [its] last 706 report.”<sup>4</sup> The U.S. Government Accountability Office (“GAO”) similarly concluded that the FCC’s “data clearly indicate that deployment of broadband networks has been extensive.”<sup>5</sup> As Chairman Martin noted, from 2005 to 2006, high-speed lines in the United States have increased significantly, from 9 million to nearly 65 million.<sup>6</sup> From June 2005 to June 2006 alone,

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<sup>3</sup> Unless otherwise noted, the term broadband in these comments encompasses, at a minimum, “high speed” services, *i.e.*, services provided with transmission at a speed in excess of 200 Kbps in at least one direction. *See Availability of Advanced Telecommunications Capability in the United States*, GN Docket No. 04-54, Fourth Report to Congress, 19 FCC Rcd 20540 (2004).

<sup>4</sup> 2007 706 NOI at ¶ 15.

<sup>5</sup> Government Accountability Office Report to the Congressional Committees, “*Broadband Deployment is Extensive throughout the United States, but it is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*,” May 2006, at 3 (“GAO Broadband Report”).

<sup>6</sup> 2007 706 NOI, at 14, Statement of Chairman Kevin J. Martin.

high-speed connections increased by 52 percent, and advanced services lines increased by 35 percent.<sup>7</sup>

Rural carriers also are upgrading their networks to provide broadband at an increased rate. According to a recent National Telecommunications Cooperative Association (“NTCA”)<sup>8</sup> survey of its members,<sup>9</sup> 100 percent of responding members provide broadband to some part of their customer base, up from 96 percent in 2005, and up from 58 percent in 2000.<sup>10</sup> Eighty-six percent of survey respondents indicated they face competition in the provision of advanced services from at least one other service provider. The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)<sup>11</sup> has also recently polled its members, showing that approximately 85 percent of OPASTCO members are offering broadband to their customers.<sup>12</sup> Of those, the vast majority is able to offer it to 90 percent or more of

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<sup>7</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of June 30, 2006* (rel. Jan. 31, 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-270128A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf).

<sup>8</sup> The NCTA describes itself as “the premier industry association representing rural telecommunications providers.” See NTCA Comments, WC Docket No. 05-271 (March 1, 2006), at note 1.

<sup>9</sup> See NTCA 2006 Broadband/Internet Availability Survey Report, August 2006, available at [http://www.ntca.org/content\\_documents/2006%20NTCA%20Broadband%20Survey%20Report.pdf](http://www.ntca.org/content_documents/2006%20NTCA%20Broadband%20Survey%20Report.pdf).

<sup>10</sup> In fact, 86 percent of NTCA survey respondents classified the process of obtaining financing for broadband projects as “fairly to moderately easy.”

<sup>11</sup> OPASTCO describes itself as a national association representing small incumbent local exchange carriers serving rural areas of the United States.

<sup>12</sup> See <http://www.opastco.org/docs/Broadband-OPASTCO-L&R.pdf>. OPASTCO notes that its “members continually upgrade their networks in order to make broadband services more widely available.” *Id.*



their customers, and almost a third can already deliver broadband to 100 percent of their customer base. All these data show that broadband deployment is proceeding apace.

**B. Increased consumer demand is fueling the build-out of broadband networks.**

Consumers increasingly are seeking higher bandwidths both at home, at work, and “on the road,” which is fueling the build-out of wireline and wireless broadband networks. Last year’s Pew Internet & American Life Project (“Pew”) study reported that consumer adoption of broadband at home “jumped from 60 million in March 2005 to 84 million in March 2006 – a leap of 40%,” which is “a substantial increase in the rate of broadband adoption compared with the previous year.”<sup>13</sup> The Pew study also reported that the rate of increase in home subscription to broadband from 2005 to 2006 (40%) was double the subscription increase rate from 2004 to 2005 (20%).<sup>14</sup> These increases are in no small part due to consumer demand for faster transmission speeds. Approximately 73 percent of U.S. households are connected to the Internet.<sup>15</sup> Consumers use the Internet in their work, to conduct research, to communicate, to advertise, and to purchase goods. And consumers use the Internet at home for entertainment, to shop, to seek out information, as well as to communicate.

Carriers therefore are racing to invest in their broadband networks, using multiple platforms – wireless, DSL, cable, satellite and powerline. The cable industry reportedly

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<sup>13</sup> John B. Horrigan, “Home Broadband Adoption 2006: Home broadband adoption is going mainstream and that means user-generated content is coming from all kinds of internet users,” May 28, 2006, available at [http://www.pewinternet.org/pdfs/PIP\\_Broadband\\_trends2006.pdf](http://www.pewinternet.org/pdfs/PIP_Broadband_trends2006.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> Berenstein Research, *US Cable and Telecom: Is Today’s DSL Tomorrow’s Dial-up?*, December 4, 2006.

has invested over \$100 billion in plant upgrades since 1996.<sup>16</sup> In addition, the desire to provide video and faster Internet access has led AT&T and Verizon to announce multi-billion dollar investments in fiber-based networks, and, as noted above, other carriers also are upgrading their networks. Moreover, smaller players in the market, such as satellite and powerline providers, also are building out broadband infrastructure. Finally, all the major wireless carriers, including Sprint Nextel, are providing some form of wireless broadband.<sup>17</sup>

**C. Sprint Nextel is at the forefront of the industry in deploying wireless broadband technology.**

Sprint Nextel has been at the forefront of meeting consumers' demand for broadband. Sprint Nextel's Evolution Data Only ("EvDO") broadband network reaches more than 200 million people nationwide, and allows consumers to access audio, video and data applications with handheld and connection broadband card devices. Sprint Nextel estimates that, by year-end 2008, its EvDO services will reach as many as 280 million people, or approximately 92 percent of the U.S. population. And Sprint Nextel was the first carrier to upgrade its mobile broadband network to the faster EvDO Revision A ("EvDO-RevA") technology.<sup>18</sup> EvDO-RevA offers significantly faster upload speeds and can enable richer applications and services such as high-speed video

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<sup>16</sup> See National Cable & Telecommunications Association, "Cable Industry Infrastructure Expenditures" at <http://www.ncta.com/ContentView.aspx?contentId=56>.

<sup>17</sup> See Remarks of Mike Altschul, "Broad-based Broadband Competition: The Role of Wireless," dated February 2007, available at [http://ctia.org/advocacy/policy\\_topics/topic.cfm/TID/37/CTID/5#5](http://ctia.org/advocacy/policy_topics/topic.cfm/TID/37/CTID/5#5).

<sup>18</sup> EvDO-Rev0 provides data speeds between 400 Kbps and 700 Kbps, while EvDO-RevA operates at speeds of 500 to 800 Kbps.

telephony, music on demand, video messaging, large file uploads and high performance push-to-talk capability.

In addition, Sprint Nextel is investing in its fourth-generation (“4G”) nationwide broadband mobile network, using its 2.5 GHz spectrum holdings and the mobile WiMAX<sup>19</sup> technology standard. This mobile WiMAX network will be designed to offer consumers and business customers significantly faster speeds, lower cost, greater convenience, and enhanced multimedia quality using WiMAX-enabled devices. Sprint Nextel will be able to provide customers with high-quality, visual-centric, and interactive applications and content, with speeds of 2 to 4 Mbps. These services will further compete against, and bring Sprint Nextel’s broadband offerings in parity with, current broadband services, *e.g.*, DSL and cable broadband. By late 2007, Sprint Nextel will soft launch markets in Washington D.C., Baltimore, and Chicago; by 2008, Sprint Nextel expects its WiMAX network to be capable of serving as many as 100 million people.

### **III. EXORBITANT SPECIAL ACCESS PRICES ARE A SIGNIFICANT IMPEDIMENT TO BROADBAND DEPLOYMENT**

Although Sprint Nextel and others are expending significant capital and resources to build-out broadband to consumers across the country, these efforts are hampered by a significant failure in a critical input to broadband providers – the special access market.

Special access services are leased lines that provide the “last mile” connections and local transport links that carriers use to provide telecommunications and information services. Specifically, “special access” refers to dedicated circuits that connect two defined points within or on a carrier’s network. Wireless carriers use special access to connect their cell towers to their switches and to the networks of the incumbent local

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<sup>19</sup> Worldwide Interoperability for Microwave Access.

exchange carriers (“ILECs”), and broadband providers use special access to connect office buildings/campuses/hotels to Internet backbone networks.<sup>20</sup>

**A. AT&T and Verizon can price special access at will because they enjoy unregulated monopoly status for the vast majority of their special access lines.**

Despite its status as a critical input to so many communications providers’ services, the ILECs, and in particular AT&T and Verizon, operate as a largely unregulated monopoly with their special access services. Special access was a \$16 billion per year business for the ILECs in 2005/2006 alone, 81 percent of which was paid out to two carriers – AT&T and Verizon. It is clear that competition in the special access market is practically nonexistent because, despite being an industry characterized by increasing efficiency and decreasing costs, AT&T and Verizon are able to demand anticompetitive prices and enjoy supra-competitive rates of return for their services.<sup>21</sup> AT&T’s and Verizon’s rates of return for special access have skyrocketed, despite decreasing investment in their own networks. As a result, in 2006, Verizon and AT&T enjoyed astounding rates of return -- 51 percent and 100 percent respectively.<sup>22</sup> One need only compare these rates of return with the FCC’s authorized rate for rate-of-return

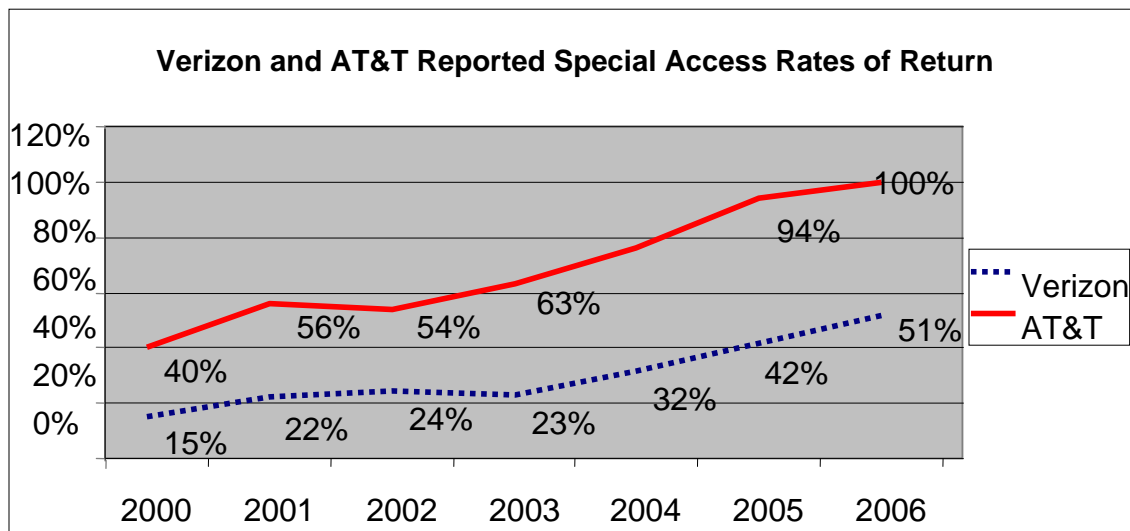
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<sup>20</sup> See *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, ¶ 3 (2005) (“*Special Access Pricing NPRM*”) (“Notably, business customers, commercial mobile radio service (CMRS) providers, interexchange carriers (IXCs) and competitive LECs all use special access services as a key input in many of their respective service offerings.”)

<sup>21</sup> See Ad Hoc March 16 Ex Parte, WC Docket No. 04-440, Attachment 4, Declaration of Susan M. Gately, para. 7 (filed March 16, 2006) (Providing economic analyses that demonstrated that, where deregulated, the Bell Operating Companies increased their special access prices and achieved excessive profit levels).

<sup>22</sup> See ARMIS 43-01 report.

carriers, 11.25 percent, which itself is a healthy profit, to understand that there is no competition keeping AT&T's and Verizon's prices in check.<sup>23</sup>



AT&T and Verizon are able to achieve supra-competitive, and steadily increasing, profits because there are very few alternative providers for their special access services. The GAO recently confirmed that competitive alternatives for special access are practically non-existent.<sup>24</sup> To the extent any competition exists at all, it is limited to the offering of high capacity special access circuits in densely populated markets.

Wherever possible, Sprint Nextel prefers to purchase special access from alternative providers, because they generally lease them at prices considerably lower than

<sup>23</sup> *Special Access Pricing NPRM*, 20 FCC Rcd at ¶ 35 (noting that “[i]n recent years, the BOCs have earned special access accounting rates of return substantially in excess of the prescribed 11.25 rate of return that applied to rate of return LECs.”).

<sup>24</sup> Government Accountability Office Report to the Chairman, Committee on Government Reform, House of Representatives, “*FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*,” November 2006 at 19 (“GAO Special Access Report”) (determining that less than six percent of buildings with demand for DS-1 level or higher are served by a fiber-based competitor, with competition being heaviest for those buildings with highest levels of demand.)

those offered by the ILECs.<sup>25</sup> Sprint Nextel therefore constantly searches of ways to reduce its costs by using alternative vendors or technologies. Unfortunately, alternative technologies, such as fixed wireless or a cable-provided circuit, rarely meet Sprint Nextel's service requirements. That, coupled with the lack of competitive special access providers, means that Sprint Nextel has access to only one special access provider – the ILEC -- at the vast majority of its cell sites.<sup>26</sup>

For example, in Boston, MA, Sprint Nextel provides wireless service to its subscribers using more than 1500 cell sites and five mobile switching centers. The lack of competitive alternatives forces Sprint Nextel to purchase 98 percent of special access lines from Verizon. Similarly, in San Francisco, Sprint Nextel also purchases 98 percent of special access lines from AT&T to connect 2000-plus cell sites to six mobile switching centers. And in Miami, Sprint Nextel purchases 88 percent of its 2800 special access lines from AT&T, connecting over 1,200 cell sites to four mobile switching centers.

Given any choice, Sprint Nextel certainly would not be paying AT&T's and Verizon's special access prices for over 95 percent of its facilities. However, few, if any, alternatives exist because competitive deployment is very difficult, both from a cost as well as an operational perspective. Special access lines, such as DS1s and DS3s, require

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<sup>25</sup> Sprint Nextel also prefers not to purchase these critical inputs from the very companies with which it competes. Given a choice, Sprint Nextel would choose to pay an alternative vendor for the services. Unfortunately, no such choice is feasible for the vast majority of Sprint Nextel's special access needs.

<sup>26</sup> Sprint Nextel purchases special access services for wireless backhaul. Most cell site "backhaul" facilities have two components: the "tail" circuits connecting a cell site to an ILEC serving wire center (and these circuits are ordinarily purchased in DS1 increments, which is basically a single loop); and the "interoffice" facilities that connect the ILEC's serving wire center with the wireless carrier's serving switches (and these circuits ordinarily use DS3 or larger facilities because they combine traffic from multiple cell sites).

high fixed, sunk costs to serve any one location. While AT&T and Verizon were able to deploy their nearly ubiquitous networks during decades of government-sanctioned and, at times, subsidized monopoly status, competitors do not have the same economies of scale that permit AT&T and Verizon to deploy special access lines.<sup>27</sup> Furthermore, what little competition in special access exists is concentrated in urban areas, sometimes only within a few city blocks or between network points where calls are aggregated. In order to provide sufficient network coverage, however, wireless carriers must have towers outside the urban areas and beyond the ILEC wire centers, locations at which AT&T and Verizon are frequently the only providers of special access. Moreover, from an operational perspective, competitors also face a number of barriers of entry to provide special access, including zoning restrictions and problems with building access.<sup>28</sup>

**B. High special access prices retard competitive broadband deployment.**

Broadband providers will increasingly rely on special access services in the coming years as they handle even greater capacity volumes of traffic over cell sites and networks to support rising consumer demand for voice, video and other data services. If broadband competitors continue to be required to pay monopoly rents for this essential input, however, broadband deployment cannot flourish as it should. Not only are these high prices anticompetitive, but the more carriers are forced to subsidize their competitors via high access prices, the less capital they have to spend on their own

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<sup>27</sup> *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, ¶ 166 (2005); *see also Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 39 (2005) (“Carriers face substantial fixed and sunk costs, as well as operational barriers, when deploying loops”); GAO Special Access Report at 13.

<sup>28</sup> *See* GAO Special Access Report at 13, 26-27.

advanced networks. A vicious cycle thus ensues – carriers purchase more capacity at higher prices, enabling AT&T's and Verizon's to enjoy even greater monopoly rents, which gives them even more market power to harm competitive broadband providers' ability to compete effectively with AT&T and Verizon, which enables them to raise their prices even further.

Sprint Nextel estimates that, if AT&T and Verizon were to reduce their profit levels to the FCC-authorized return of 11.25 percent, Sprint Nextel alone would realize an annual cost savings of \$790 million. Other carriers are also suffering the adverse effects of monopoly pricing, and also could benefit from price reductions to reasonable levels. Sprint Nextel and those carriers could be using those savings to accelerate their own broadband deployment, rather than to subsidize AT&T and Verizon.

High special access prices also harm competition in the provision of broadband services. By maintaining artificially high input – *i.e.*, special access – prices, AT&T and Verizon effectively are able to set a price floor for the provision of wireless services. This harms consumers by needlessly increasing the costs of providing service and harms competition because AT&T and Verizon are able to protect their own landline broadband services from more intense competition from wireless alternatives.

#### **IV. THE COMMISSION CAN AND SHOULD ACT TO ACCELERATE BROADBAND DEPLOYMENT BY REINTRODUCING DISCIPLINE OVER SPECIAL ACCESS PRICES THAT THE MARKET HAS FAILED TO PROVIDE**

AT&T and Verizon have been able to price special access at exorbitant levels for two reasons: (1) the premature grant of pricing flexibility; and (2) for services still under price caps, the elimination of the downward adjustment of the cap to reflect increases in productivity.



When the Commission adopted its pricing flexibility policies in 1999, it did so based on the premise that deregulation would spur competitors to enter the market.<sup>29</sup> That predicted competition failed to develop, which has led to exorbitant prices and uncontrolled monopolistic behavior.<sup>30</sup> Indeed, parties have shown the Commission that the regional Bell Operating Companies (“RBOCs”) often charge prices higher in those markets where they have been granted pricing flexibility than prices under price caps.<sup>31</sup> Had the predicted competition developed, market forces would have forced the RBOCs to reduce their prices to cost levels rather than allowing the sustained, high prices they charge today. AT&T’s and Verizon’s ability to achieve such high rates of return for their services is utterly inconsistent with the notion that the special access market is

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<sup>29</sup> *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-63, 98-157, Fifth report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff’d Worldcom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

<sup>30</sup> Parties have provided significant evidence that there is no competition in the majority of special access services. *See, e.g.*, MCI Comments, WC Docket No. 04-313, at 157-58 (Oct. 4, 2004) (noting that, between 1996 and 2003, “the BOCs as a group enjoyed an almost six-fold increase in the rate of return for interstate special access (from 7.6% to 43.7%), with three BOCs reaping returns in excess of 60% in 2003.”); AT&T Wireless Comments, RM No. 10593, at 2-3 (Dec. 2, 2002) (stating that CMRS carriers have “no choice” but to rely on ILEC special access, pointing out that “more than ninety percent (“90%”) of its transport costs go to paying ILECs for special access.”); T-Mobile Comments, WC Docket No. 05-25, at 7-8 (June 13, 2005) (presenting evidence showing that “more than 96%” of the DS1 backhaul facilities to its cell sites are purchased from ILECs); Nextel Reply Comments, WC Docket No. 05-25, at 6 (July 29, 2005).

<sup>31</sup> *See, e.g., Special Access Rates for Price Cap LECs NPRM*, 20 FCC Rcd at 2014 ¶ 59 (The old “AT&T also presents evidence purporting to show that current rates for special access services under the existing price cap plan generally are lower than rates established under a grant of pricing flexibility.”); at 2018 ¶ 70 (“[P]arties have introduced evidence that the price cap LECs have not used this flexibility to lower special access rates in any MSA for which they have received Phase II pricing flexibility. Instead, these parties contend that the price cap LECs have either maintained or raised rates in each of these MSAs.”); GAO Report 07-80 at 27-29 (Data show that prices for special access services in MSAs where phase II pricing flexibility has been granted are higher than the prices under the less-deregulatory phase I flexibility or under price caps).

competitive and that regulation is no longer needed to ensure that the RBOCs' special access rates are just, reasonable and not unjustly discriminatory.

AT&T and Verizon are able to realize monopoly rents even where special access pricing remains under price caps. Under the Commission's current price cap formula for special access services, the X-factor is set at inflation, which means that price cap carriers do not have to reduce their prices to take into account decreasing costs and increasing productivity. Hence their ability to earn astounding rates of return for these services, even where they are still subject to price caps.

The Commission should reverse its premature deregulation of special access and reintroduce meaningful price cap regulation for all special access services.<sup>32</sup> The Commission should deregulate services only once true competition develops sufficient to discipline special access services. As Verizon Wireless previously told the Commission with regard to intercarrier compensation reform, "compensation should be provided with reference to the cost of providing service, not serve as an uncapped, unending revenue source for certain carriers by requiring their competitors to subsidize them."<sup>33</sup> By implementing the pricing discipline that the marketplace has failed to provide, the Commission will ensure that AT&T and Verizon will not succeed in retarding the deployment of competitive broadband services.

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<sup>32</sup> This issue is squarely before the Commission in the *Special Access Pricing NPRM*.

<sup>33</sup> Comments of Verizon Wireless, CC Docket No. 01-92, at 11 (filed Oct. 25, 2006).

**V. THE COMMISSION CAN TAKE SEVERAL OTHER IMPORTANT, PROACTIVE MEASURES TO HELP ACCELERATE BROADBAND DEPLOYMENT**

**A. The Commission Should Finalize the H Block Service Rules and License this Valuable 10 MHz of Spectrum for Advanced Wireless Communications as Quickly as Possible.**

The Commission acted wisely when it allocated the 1915-1920 and 1995-2000 MHz to terrestrial mobile use in 2004.<sup>34</sup> The so-called H Block spectrum offers both incumbents and new entrants an enormous opportunity to provide new and improved wireless broadband services to consumers in the United States. In adopting the H Block allocation, the Commission's stated goals were to "enable service providers to maximize the use of this spectrum" and to promote the "most efficient use of the spectrum to support innovative mobile applications."<sup>35</sup> Since then, virtually all sectors of the industry have exhaustively debated the proper service rules for the band and the points of disagreement are few. The last major hurdles to deployment of services to consumers using this spectrum are the Commission's final adoption of service rules in this band and the implementation of a competitive bidding process. The Commission can accelerate the deployment of broadband in the United States by swiftly adopting long-delayed service rules for the H Block and then licensing this spectrum through a process of competitive bidding.<sup>36</sup>

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<sup>34</sup> *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order, 19 FCC Rcd 20720 (rel. Sept. 22, 2004) (H Block Allocation Order).

<sup>35</sup> *Id.* ¶ 3.

<sup>36</sup> *See Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, WT Dockets 04-356, 02-353, Notice of Proposed

Adjacent to the core personal communications service bands, the H Block is ideally suited to the rapid deployment of Advanced Wireless Services. The H Block, as the Commission has held, is:

particularly well suited for [AWS use] because of its adjacency to and identical frequency separation with the existing Broadband PCS. Pairing 1915-1920 MHz with 1995-2000 MHz would benefit from the design of high power PCS equipment in the adjacent Broadband PCS bands, which in turn would promote the rapid design and deployment of new systems and result in economies of scale. Such a pairing would, as a practical matter, increase the deployment options available to new licensees under an AWS designation. Also, this pairing would maximize the value of the spectrum by achieving greater spectrum efficiency.<sup>37</sup>

In short, the H Block presents one of the best opportunities available for the rapid deployment of advanced wireless services and broadband applications. While minimally intrusive power and out-of-band emissions limitations are needed to ensure other licensees do not experience harmful interference, the H Block is already in the process of being cleared of incumbent operators and the ecosystem of equipment manufacturers and potential licensees is already producing large quantities of similar network devices today. Consistent with the Commission's longstanding policies of seeking spectrum efficiency and permitting markets to operate, the Commission should rapidly adopt service rules for H Block designed to promote the continued development of advanced wireless services and broadband applications by finalizing the H Block service rules.

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Rulemaking, 19 FCC Rcd 19263 (2004).

<sup>37</sup> *Id.* ¶ 38.

**B. The Commission should allocate white space frequencies for licensed, fixed use.**

Sprint Nextel supports the Commission's efforts to ensure that available spectrum is used intensively and according to its highest and best use. The Commission's open proceeding on TV white spaces is an example of an important opportunity to permit wireless licensees to obtain much-needed spectrum to support advanced wireless services.<sup>38</sup> The TV white space represents a significant amount of prime spectrum that can be used in furtherance of the public interest, including for such uses as wireless backhaul. As noted previously, Sprint Nextel uses special access lines purchased almost exclusively from AT&T and Verizon for its backhaul. Currently, wireless backhaul being offered by vendors is not a viable alternative for the vast majority of Sprint Nextel's backhaul needs. As service providers develop and expand their broadband wireless offerings, however, the need for additional backhaul will increase substantially, thus further increasing the need for viable spectrum to support wireless backhaul as an alternative. The TV white space frequencies provide an ideal opportunity to satisfy this critical and growing need for backhaul without disrupting the existing operations of incumbent TV licensees. Furthermore, in exchange for the authority to operate on this valuable spectrum, wireless licensees should compensate the U.S. Treasury and, by extension, the American people. The American public should benefit from the use of this valuable national resource. For this reason, the Commission should allocate the significant majority of the available TV white space frequencies in each geographic licensing area for licensed, fixed use.

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<sup>38</sup> See *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET Docket Nos. 04-186, 02-380, First Report and Further Notice of Proposed Rule Making, 21 FCC Rcd 12266 (2006).

Offering TV white space frequencies on a licensed, fixed basis promotes the public interest by safeguarding incumbent operations. Based on the record of this proceeding, broadcasters have raised significant concern that unlicensed operations may interfere with broadcast TV transmissions. This is understandable; unlicensed operations have been most successful when the distance at which interference can occur is limited. As the Commission has recognized, frequencies in the TV white space spectrum have favorable propagation characteristics. These longer distances mean that sharing between unlicensed devices and incumbent users will be difficult and the likelihood of interference will be greater than that in other bands.

The FCC and the industry have worked hard to ensure the success of the digital television transition, and this success should not be compromised now, just as the public is ready to enjoy the full benefits of the transition. Licensed operations will minimize any risk of harmful interference, and will facilitate a predictable and stable spectrum environment. Licensed operations such as fixed point-to-point and fixed point-to-multipoint systems can be designed easily to protect incumbent broadcasters. Unlike the unknown operators of unlicensed devices, licensees are readily identifiable, so that parties may not only swiftly redress any instances of interference, but may also work together to ensure that interference does not occur in the first place.

In addition, by licensing TV white space frequencies, the Commission can ensure that this spectrum is efficiently utilized without unnecessarily relying on cognitive radio or other complex and unproven technologies. Spectrum sensing technologies may hold great potential for the future, but these technologies are still nascent and insufficiently tested, particularly for situations involving the protection of stations, such as TV

broadcasters, that are providing service over large geographic areas. If the Commission prematurely introduces spectrum sensing technology and this technology fails to provide sufficient protection to incumbent broadcast licensees – as likely will be the case – investor confidence and support for the continued development of these otherwise promising technologies may wane. While the Commission might consider holding a portion of the TV white space frequencies in reserve for unlicensed use at a point when spectrum sensing technologies have matured, such future unlicensed use should not preclude making large portions of the spectrum available now for licensed, fixed use.

By providing for licensed operations in the TV white space, the FCC will ensure that wireless licensees enjoy the benefits of certain regulatory safeguards and thereby encourage investment in TV white space infrastructure and technology. Increased investment in research and technology will advance the deployment of new, innovative services to American consumers.

### **C. The Commission should follow its rules governing license renewal.**

The successful deployment of wireless broadband services depends upon the ability of licensees to rationally predict the Commission’s enforcement of its own rules and policies. With respect to license renewal, the Commission’s rules are abundantly clear: licensees must renew their licenses on time.<sup>39</sup> The Commission has repeatedly held that where a license has expired, the licensee has nothing to renew because the authorization no longer exists.<sup>40</sup> To establish an environment stable enough to invest

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<sup>39</sup> See 47 C.F.R. § 1.955(a)(1) (“Authorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed.”).

<sup>40</sup> *Applications of James A. Kay, Jr.*, Memorandum Opinion and Order, 17 FCC Rcd 5951, ¶ 6

billions upon billions of dollars in the deployment of advanced wireless services, the Commission should consistently enforce its own rules and deny “renewal” to licensees that seek to recapture spectrum from incumbent licensees based on licenses that lapsed years or even decades earlier.

The Commission, of course, has the discretion to grant fact-specific, short-term waivers of renewal deadlines in extraordinary circumstances. Recently, however, the Commission has waived its license renewal obligations in certain services for no apparent reason at all – granting “renewals” based on “administrative oversight” that in many cases were filed *years* after the licenses expired.<sup>41</sup> Granting unrestrained waivers of spectrum-licensing obligations – the fundamental building block of the wireless industry – is unsound law.<sup>42</sup> Granting these “waivers” without regard to how dilatory the licensee has been or how disruptive the reinstatement proves to other licensees is *both* unsound law and unsound policy. If the Commission were to grant these grossly untimely

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(WTB 2002); *see also, e.g., Microband Corporation of America*, Memorandum Opinion and Order, 19 FCC Rcd 21947, ¶ 10 (WTB 2004) (renewal application dismissed after the Commission found that the license had been previously forfeited); *Caribbean MMDS Partnership*, Memorandum Opinion and Order, 18 FCC Rcd 23849, ¶ 12 (WTB 2003) (renewal application dismissed after Commission found that the license was previously cancelled); *Kannew Broadcast Technologies*, Memorandum Opinion and Order, 18 FCC Rcd 23844, ¶ 8 (WTB 2003) (renewal application dismissed after the Commission found that the license had been previously forfeited); *North Eastern Massachusetts Law Enforcement Council*, Order, 16 FCC Rcd 12474 (WTB 2001) (renewal application dismissed even though licensee was engaged in public safety activities and filed less than two months after its expiration deadline).

<sup>41</sup> *Forty-one Late-Filed Applications For Renewal of Educational Broadband Service Stations*, Memorandum Opinion and Order, 22 FCC Rcd 879 (WTB, Broadband Division 2007).

<sup>42</sup> *See, e.g., Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14247 (2004) (citation omitted); *see also* 47 C.F.R. § 1.955(a)(1) (providing that “authorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed.”).



“renewals,” it would take spectrum away from hundreds of legitimate licensees who have faithfully followed the Commission’s rules, and call into question the validity of spectrum licenses in many different advanced wireless service spectrum bands. Consistently rejecting untimely “renewals” of long-expired licenses, by contrast, will accelerate the deployment of broadband services by creating a stable regulatory environment that can support the investment of billions of dollars and hundreds of thousands of working hours necessary to deliver wireless broadband services to the public.

**D. The Commission should support removing ITU regulatory barriers to WiMAX deployment.**

Although the focus of this inquiry is on deployment of broadband services in the United States, it is clear that such deployment will be influenced by international developments. While Sprint Nextel’s current focus is to deploy its WiMAX service inside of the United States, whether and how other governments facilitate the deployment of WiMAX within their nations’ boundaries will have a significant effect on the costs and value of Sprint Nextel’s investment and on the consumer benefits that can be achieved as a result of its investment. The United States should not run the risk of becoming a WiMAX “technology island,” which would deny consumers the benefits of economies of scope and scale that much broader deployment will ensure. Moreover, WiMAX deployment in many countries will make possible roaming arrangements that will promote the development of interoperable customer equipment and enhance the value of U.S. domestic service. The Commission thus has taken, and should continue to take, a leadership role in breaking down the boundaries to global WiMAX deployment.

In particular, the Commission should continue its efforts to include WiMAX within the family of technologies that comprise IMT-2000.<sup>43</sup> Substantial amounts of spectrum are identified in the International Telecommunication Union's ("ITU's") Radio Regulations as appropriate for IMT-2000 deployment, and there will be auctions in several countries in 2008 of such spectrum, including the 2.5 GHz band. Significant progress has been made in the ITU's Working Party 8F<sup>44</sup> toward inclusion of WiMAX within the IMT-2000 definition. The Commission and other U.S. Government agencies should withstand the objections of a few private sector members (including certain U.S. companies) who seek only to delay the roll-out of WiMAX technology that will compete with incumbent-provided third generation ("3G") wireless services. Further consistent with the policy of technology neutrality, the Commission should strongly support the U.S. draft position in World Radiocommunication Conference 2007 ("WRC-07") Agenda Item 1.4 that would have the effect of opening up IMT-2000 spectrum to "other Broadband Wireless Access systems."<sup>45</sup>

Finally, the Commission should reject the efforts of the satellite industry to vitiate the Commission's decision to delete the domestic satellite allocation in the 2.5 GHz band

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<sup>43</sup> IMT-2000 was adopted at the 2000 World Radio Conference, which approved ITU Radiocommunication Sector ("ITU-R") Recommendation M. 1457. That recommendation details the specifications for five radio interfaces that comprise the IMT-2000 family of third-generation ("3G") wireless technologies. Three of the interfaces are variants of CDMA, one is a TDMA interface, and the fifth is Digital Enhanced Cordless Communications ("DECT"). No new technology has been added to IMT-2000 since it was adopted in 2000.

<sup>44</sup> Working Party 8F ("WP-8F") is a sub-unit of ITU-R's Study Group 8, which is charged with developing international recommendations for systems and networks providing mobile, radiodetermination and amateur services, including related satellite services. WP-8F is studying revisions to ITU-R Recommendation M. 1457.

<sup>45</sup> IWG-3 View B, Document WAC/148(13.12.06). *See FCC Seeks Comment on Recommendations Approved by the Advisory Committee for the 2007 World Radiocommunication Conference*, Public Notice, DA 07-26 at 16-33, IB Docket No. 04-286 (rel. Jan. 9, 2007).

because of concerns about satellite interference to terrestrial systems.<sup>46</sup> Satellite interests, in the preparation of the U.S. position on WRC-07 Agenda item 1.9, seek to undercut the U.S. proposal for lower power limits on satellite systems that will provide the necessary protection to terrestrial systems in this band – they seek to allow the bringing into use until 2010 (or even later) of new systems that meet the older, higher power limits. If non-U.S. satellite systems were to launch and operate at the higher levels with footprints that reach into the United States, there would be the potential for substantial interference problems affecting a large percentage of WiMAX base stations and mobile units. The Commission has played an invaluable role in providing technical expertise to other U.S. Government agencies on this complicated issue, and it should continue in that regard, such that these agencies have a full understanding of what the negative impact would be on U.S. mobile terrestrial broadband deployment if these interference problems are allowed to arise.

**E. The Commission should take further action to improve tribal consultation processes.**

In 2005, the Commission took significant and much-needed steps to streamline the process by which parties seeking to erect communications towers and equipment must first consult with federally recognized Indian tribes (“Indian tribes”) and Native

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<sup>46</sup> See *Amendment of Parts 2, 25, and 87 of the Commission’s Rules to Implement Decisions from the World Radiocommunication Conferences Concerning Frequency Bands Between 28 MHz and 36 GHz and to Otherwise Update the Rules in this Frequency Range*, Report and Order, 18 FCC Rcd 23426, 23445 (2003) (eliminating the unused Fixed Satellite Service (“FSS”) and Broadcasting Satellite Service (“BSS”) allocation from the 2.5 GHz band, recognizing that mitigating harmful interference from BSS and FSS operations would impose high costs on terrestrial licensees); *Amendment of Parts 2, 25, and 87 of the Commission’s Rules to Implement Decisions from the World Radiocommunication Conferences Concerning Frequency Bands Between 28 MHz and 36 GHz and to Otherwise Update the Rules in this Frequency Range*, Order on Reconsideration, 21 FCC Rcd 5492 (1996).

Hawaiian organizations (“NHOs”).<sup>47</sup> The Commission’s order set forth reasonable deadlines for responses when an entity proposed to build a communications tower within the geographic area of interest to a particular Indian tribe or NHO. The Commission should take further actions in this area to accelerate the deployment of equipment that can provide broadband wireless services in rural and urban areas.

The 2005 order sets key deadlines for the initial notification processes. The order, however, neglects to address the situation in which an Indian tribe or NHO has requested additional information from the tower builder. Frequently, the builder responds, but then hears nothing back from the Indian tribe or NHO despite repeated attempts on the part of the tower builder to follow up. In an effort to avoid further delay and prevent a backlog of applications, the Commission ought to develop a simple process that addresses situations where the Indian tribe or NHO has expressed an interest, requested additional information, but has not responded within a reasonable period of time, for example, 30 days.

Further, the Commission should clarify that certain collocations of communications equipment do not require tribal notification. Currently, the 2004 Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (“NPA”) and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (“Collocation PA”) specify that installation of an antenna on a rooftop or non-tower structure (*e.g.*, a water tower) more than 45 years old requires tribal notification even if

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<sup>47</sup> See *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Process*, Declaratory Ruling, FCC 05-176, 20 FCC Rcd 16092 (2005).

the installation does not involve any ground disturbance. Indeed, in some cases, tribal notification for placing equipment on such structures even in dense, urban environments is required although the installation has no possible impact on historic properties of cultural or religious significance to Indian tribes or NHOs. The Commission should amend the 2004 NPA and Collocation PA to clarify that no tribal notifications are necessary for installations on building rooftops, water towers, or other free-standing structures in densely populated urban areas or other areas where the Indian tribe or NHO has indicated that it is not interested in receiving notifications regarding such installations.

By taking these modest actions, the Commission can reduce the time it takes to deploy critical equipment for the provision of broadband wireless services.

## **VI. CONCLUSION**

Broadband deployment is proceeding in a reasonable and timely manner. Consumer demand is spurring deployment of competitive broadband networks, despite anticompetitive wholesale pricing for special access. The Commission, however, can take several actions to further spur broadband deployment. The Commission should eliminate a major deterrent to the funding of increased deployment of broadband access networks by constraining the ILECs' market power over a critical input to broadband service -- special access. The Commission can further advance the deployment of broadband networks by (1) finalizing the H Block service rules and licensing this valuable 10 MHz of spectrum for Advanced Wireless Communications as quickly as possible; (2) allocating white space frequencies for licensed, fixed use; (3) following its own rules governing license renewal; (4) supporting removing ITU regulatory barriers to

WiMAX deployment; and (5) taking further action to improve tribal consultation processes.

Respectfully submitted,

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